Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of	)	
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Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands	)	PR Docket No. 92-80 RM 7909
	)	
To: The Commission	)	

REPLY COMMENTS

The Consortium of Concerned Wireless Cable Operators (the "Consortium"), by counsel and pursuant to Section 1.415(b) of the Commission's Rules, hereby submits these Reply Comments in connection with the Notice of Proposed Rule Making, PR Docket No. 92-80, FCC 92-173, released May 8, 1992 ("NPRM").

I. INTRODUCTION

The Comments filed in this proceeding reflect general agreement on a number of issues of concern to the Consortium. Nearly every commenter urged the Commission to: (a) retain its interference protection standards rather than adopting a 50-mile co-channel separation standard or a short-spacing table; (b) create a combined MDS/ITFS database and consolidate MDS and ITFS processing[1] and regulation in the Mass Media Bureau; and (c) expand

[1] The Consortium opposes the suggestion of those few commenters that recommend that the Commission rank the top ten lottery selectees for each market. These commenters reason that conditional licenses for a market would be awarded more quickly if, upon the dismissal of the first-selected lottery winner, alternates were pre-selected and the application of the first runner-up then processed. These procedures should not be adopted because, as in later-round MSA cellular markets, the lottery winner would likely be subjected to frivolous petitions by the alternates. This would slow MDS processing considerably.

the protected service area contour afforded wireless cable operators and simplify procedures for authorizing signal boosters.

The commenters split sharply, however, on several issues regarding ITFS and MDS relations. The Consortium advocates adoption of procedures which will strike an appropriate balance between educational and commercial use of the frequencies. Aspects of the current proposals regarding interference protection to ITFS receive sites, service requirements and petition to deny deadlines needlessly err on the side of protecting ITFS interests at the expense of the development of cable-competitive wireless cable systems when less restrictive procedures are available to more fully protect ITFS interests.

Existing rules governing interference protection to ITFS receive sites afford educators an opportunity to file petitions to deny within 120 days of the acceptance for filing of an MDS application, pursuant to Section 21.902(i)(6)(i).[2] MDS applicants also are required to serve ITFS licensees (by certified mail, return receipt) with copies of their interference analyses and provide proof of service to the Commission.

As contemplated, the existing rules would be amended to include an additional requirement that would chill wireless cable development. These new rules would require an MDS operator to provide notice to all ITFS licensees within seventy miles of the proposed MDS transmit site that it will be commencing operations in fourteen days. An ITFS licensee would then have thirty days after the MDS station commenced operation to file a complaint with the

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[2] MDS applicants, on the other hand, have only thirty days after acceptance for filing to file petitions to deny. See Sections 21.30 and 1.824. See also p.6, infra.

Commission claiming actual interference to its receive sites.[3] The MDS station would be required to immediately cease operations, without the benefit of a hearing.

Commenters representing the interests of ITFS licensees favor the Commission's proposals, and suggest that the thirty day post-operation protest period be expanded to sixty, ninety or 120 days to accommodate those times when school is not in session and in order to allow the educator to evaluate the impact of seasonal foliage changes.[4] The Consortium and its members, many of whom have forged mutually beneficial relationships with educators, are sensitive to the special needs of educators but are concerned that the financial community soon would conclude that wireless cable is a bad risk because operations could be terminated upon the mere filing of an interference claim.

Moreover, adoption of a protest period after commencement of operations is rife with potential for abuse.[5] ITFS interests

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[3] The current rules afford protection based on theoretical calculations of potential interference based on the use of the FCC "reference antenna." When placed into operation, many educators elect to use antennas with technical characteristics inferior to the referenced antenna. As a result, if forced to provide protection based on "actual" interference, MDS applicants would be placed in the untenable position of having designed a system based on inaccurate data. MDS applicants should be required to protect all proposed receive sites based on calculations drawn from the Commission's records, not just those that are actually constructed.

[4] MDS licensees are required to file an annual ownership report with appropriate updated information. Requiring ITFS licensees to also annually file such a report would address some of the concerns apparently faced by ITFS licensees who fear service copies may go to the wrong person who may not be available due to holidays. With all due respect, even educators should be required to maintain a current address and contact available all year long. This is the least to be expected of an FCC licensee.

[5] In order to deter speculation by wireless cable operators "backing" numerous proposals all over the country, the Consortium advocates modifying FCC Form 330 to require the applicant to: (a) disclose the ITFS applicant's financial source; (b) submit a

hostile to commercial use of ITFS frequencies or those backed by a competing operator could conjure up a fallacious claim of interference for the sole purpose of disrupting the operator's service. After millions of dollars have been invested in system design and development, an operator would take little solace if its interests were ultimately vindicated, because even if it were able to avoid bankruptcy, it would likely have lost an important business opportunity.

Less restrictive means are available to strike an appropriate balance between the legitimate interests of the educators in maintaining an interference-free system and the commercial operators' desire to commence operations without risk of being forced to cease operations without due process (and following a substantial investment of human and financial capital). This balance could be achieved by adoption of new rules which would: (a) automatically grant each ITFS system a protected service area equivalent to that provided for commercial operations over ITFS channels; (b) require each MDS applicant to study and demonstrate non-interference to all ITFS receive sites tendered for filing as of the filing of its MDS application, and require service of such study on the educators at the time of filing; and (c) set a sixty-day period following acceptance for filing of the MDS application for the educator to add receive sites within its protected service area (for which it is entitled to interference protection) or

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statement identifying the relationship between the applicant and the financial source; and (c) itemize the construction and initial operation costs. See FCC Form 301, 66 RR 2d 519, 529 (1989). It is also important that any funds to be provided by a wireless cable operator be demonstrated to be uncommitted to other projects in order to discourage the pledge of the same funds to multiple ITFS proposals all over the country, which ultimately clog the application process.

outside the protected service area (for which it must protect the MDS applicant), and to serve the MDS applicant with its amendment or modification application, as the case may be.

Following this sixty-day post-acceptance period, the MDS application would be ripe for grant if the educator did not seek to add receive sites, or add receive sites within its protected service area, or add non-interfering receive sites outside its protected service area. In those instances where the educator sought to add receive sites outside its protected service area, the educator would bear the burden of demonstrating that it has taken exceptional steps to design a system that would not be electrically mutually exclusive with the MDS application. The educator and the MDS applicant would have a continuing obligation to cooperate to resolve any matters of "actual" interference that arise after grant of the applications.

In this way, the educator is first put on notice by the filing and serving of the MDS application that the matter should be monitored and that if it wishes to add receive sites, it must do so by a date certain, i.e., sixty days after acceptance of the MDS application.[6] This proposal injects much-needed certainty into the process and strikes a fair balance between the needs of the educator and those of the MDS operator.

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[6] Currently, under Section 21.902, MDS applicants are not required to serve copies of interference analyses on ITFS licensees until after the application is accepted for filing. This provision was adopted to unburden ITFS interests who were often receiving multiple copies of identical proposals generated by application mills. However, if many of the rule changes advocated by the commenters are adopted, speculation should be deterred and ITFS interests would more than likely receive fewer proposals. It is clearly in the educators best interests to be provided with a copy of the MDS proposal early, so that it has as much time as possible to analyze the data. The current rules actually frustrate this objective.

The revisions must also be coupled with changes to the petition to deny deadline. The petition period for ITFS interests should be conformed with the time allowed to other interested parties pursuant to Section 1.824 (for lottery winners) and Section 21.30 (for mutually exclusive applicants). All parties -- ITFS and MDS alike -- should be subject to the same deadline for filing petitions to deny the same MDS application. That deadline should be expanded from thirty to sixty days, however, to accommodate the interests of educators.

Respectfully submitted,

THE CONSORTIUM OF CONCERNED WIRELESS CABLE OPERATORS

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